IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 3283 OF 2007

Hemant M. Jadhav .... Petitioner

versus

State of Maharashtra and others..... Respondent.

Shri R.K.Mendadkar for the petitioner
Shri M.B.Mehere for Respondents 2 and 3
Shri S.K.Chincholikar AGP for Respondents 1,4 & 5.

CORAM; A.P. DESHPANDE, J.
DATED; 15TH JUNE, 2007

P.C.;

1. Rule. Rule made returnable forthwith. By consent of parties taken up for final hearing.

2. The petitioner is a candidate belonging to Scheduled Tribe category of backward class. Pursuant to an advertisement issued by the respondent nos. 2 and 3 on 14-7-2003 the petitioner applied for the post of teacher in Maintenance and Repairs of Electric Domestic Appliances. The requirement in relation to educational qualifications for the said post was degree/diploma in electrical engineering in second class, and one year experience in case of degree holder and three years experience in case of diploma

holder. The petitioner possessed the qualification of diploma with first division and had to his credit experience of two years and eight months. The petitioner was thus falling short of the experience of four months. The post in question was reserved for Scheduled Tribe category candidate and the petitioner was most suitable candidate from the said category, fulfilling the educational qualification but was falling short of four months experience. Taking over all view of the matter and prevailing fact situation that candidates from S.T. category are rarely available, the respondent nos. 2 and 3 appointed the petitioner to the post of teacher. The appointment was made on probation for a period of two years i.e. with effect from 1-9-2003 as full time teacher. The work and behaviour of the petitioner was satisfactory and he was continued till the academic session 2003-04. The respondent nos. 2 and 3 submitted the proposal for seeking approval of the appointment of the petitioner to the Deputy Director of Vocational Education. The Deputy Director did not grant the approval but made certain queries and kept the matter pending. The Deputy Director of Vocational Education had made certain queries from the respondent nos. 2 and 3 as to whether any other candidate from S.T. category with requisite experience was available for manning the post in question and respondent nos. 2

and 3 have replied that the petitioner was the sole candidate satisfying the educational qualification but lacking the experience only by four months. It is not in dispute that the criteria of three years experience can be relaxed by the competent authority. The communication at Exh.D from the Director of Vocational Education dated 28-6-2005 clearly reveals that the Director had informed the Deputy Director that the petitioner belongs to S.T. category and his appointment has made in consonance with the roaster point earmarked for S.T. category. It is further stated in the communication that the criteria of three years experience can be relaxed in view of the government decision dated 30-5-1985. In substance the Director of Vocational Education had strongly recommended relaxation of the criteria of experience in favour of the petitioner. However, Deputy Director of Vocational Education has chosen to refuse to approve the appointment of the petitioner and consequence upon that petitioner was terminated form service in June 2005.

3. Aggrieved by the termination of service, the petitioner filed an appeal before the Presiding officer, School Tribunal. The Tribunal has dismissed the appeal by holding that the petitioner was not fully eligible for being appointed to the post of

teacher. Aggreived by the judgment and order passed by the Tribunal, this writ petition has been filed.

4. The learned counsel for the petitioner submits that the petitioner as of now possesses about four and a half years experience and as his work and behaviour is satisfactory the experience ought to have been, in the first place relaxed by the Deputy Director of Vocational Education and more so when the recommendation of the Director was made in communication dated 20-6-2005. It is then submitted that having regard to the fact that the petitioner is a better qualified candidate as he has passed the diploma in first Division , besides belonging to S.T. category, the criteria of lacking experience at the time of initial appointment be condoned. In all fairness the learned counsel submits that the petitioner has received a sum of Rs.29,000/- and if he is paid a further sum of Rs.45,000/-, he would give up his claim for wages for the period prior to June 2005. The learned counsel further submits that he is not claiming salary from June 2005 till date as he has not worked. However the petitioner has prayed to grant continuity in service from the date of initial appointment. The learned counsel appearing for respondent nos. 2 and 3 responding in the same spirit

agrees to pay a sum of Rs.45,000/- to the petitioner towards full and final settlement of all claims towards salary and wages prior to June 2005. The respondent nos. 2 and 3 have no objection in granting continuity of service from the initial date of appointment.

5. The learned AGP appearing for the respondent nos.1, 4 and 5 has submitted that no financial burden should be placed on the said respondents while allowing the petition. In view of the fact that the respondent nos. 2 and 3 have agreed to pay a sum of Rs.45,000/- in addition to whatever has been paid earlier for the period prior to June 2005, there shall be no liability on respondent nos. 1,4 and 5 for payment of arrears of salary or backwages to the petitioner. In the peculiar facts of this case I am of the clear view that ends of justice would be advanced by allowing the petition and granting the petitioner the relief of reinstatement with continuity of service. Hence the following order.

6. The impugned order of termination of service of the petitioner at the hands of respondent nos. 2 and 3 is quashed and set aside. The impugned order passed by the School Tribunal dated 22/12/2006 in appeal no. 1 of 2006 is quashed and set aside. The writ petition

is partly allowed. The respondent shall resinstate the petitioner in service as a teacher and grant continuity of service from the initial date of appointment viz. 5-9-2003. The respondent nos. 2 and 3 shall pay a sum of Rs.45,000/- towards full and final settlement of all monetary claim of the petitioner upto June 2005. For the period thereafter till this date the petitioner shall not be entitled to receive any wages as he has not worked and specifically given up his claim for that period. The respondent nos. 2 and 3 shall reinstate the petitioner within a period of two weeks from today and shall forward the proposal to the respondent no.4 and/or 5 seeking approval to the appointment of petitioner with effect from 5-9-2003 and for release of salary grants. The respondent nos.4 and 5 shall approve the appointment of the petitioner with effect from 5-9-2003 and shall treat him as in continuous service since then onwards. It is needless to mention that from the date of reinstatement, the respondent nos. 4 and 5 shall honour the salary bills submitted by the respondent nos. 2 nd 3 claiming the salary grants of the petitioner. Rule made absolute in above terms with no order as to costs.

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